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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 CENGAGE LEARNING, INC., a Delaware
14 corporation; JOHN WILEY & SONS, INC.,
15 a New York corporation; THE MCGRAW-
16 HILL COMPANIES, INC., New York
17 Corporation; and PEARSON EDUCATION,
18 INC., a Delaware corporation,

19 Plaintiffs,

20 v.

21 AIM DISCOVERY, INC., a California
22 Corporation; INFINITI FURNISHINGS,
23 INC., a California Corporation; DERRICK
24 FOONG, AKA CHIN WAH FOONG, and
25 CARSON LEW, AKA, KAHSOON LEW;
26 and DOES 1-20

27 Defendants.
28

Case No.: 2:11-CV-3738 GHK (PJWx)

Honorable George H. King

~~PROPOSED~~ PROTECTIVE ORDER

1 Pursuant to the Parties' Stipulation for Protective Order, and for good cause
2 show, the Court enters the following Order:

3 **1. Definitions:**

4 a. "Party" means a named Party in this case and any of its/his/their
5 related entities.

6 b. "Person" means an individual or an entity.

7 c. "Producer" means a Person who produces information via the
8 discovery process in this case whether a party or a non-party to this litigation.

9 d. "Recipient" means a Person who receives information via the
10 discovery processing this case.

11 e. "Confidential" information is information concerning a
12 Person's business operations, processes, and technical and development
13 information within the scope of Rule 26(c)(1)(G), the disclosure of which is likely
14 to harm that Person's competitive position, or the disclosure of which would
15 contravene an obligation of confidentiality to a third Person or to a Court.

16 Confidential information may include the parties' customer and supplier lists, the
17 parties' cost and pricing information, information regarding the parties' profits and
18 damages, and banking records.

19 f. An "Expert" or a "Consultant" is a Person: (i) who is not an
20 employee, director, officer, Consultant, supplier, distributor, or business associate
21 of a Party nor anticipated to become an employee, director, officer, Consultant,
22 supplier, distributor, or business associate of a Party in the near future; (ii) who is
23 not regularly employed or retained by a competitor of a Party; (iii) who does not
24 currently have any consulting arrangement with a competitor of a Party; (iv) who
25 does not have any direct economic relationship with a Party, except as set forth in
26 subpart (v) of this paragraph; and (v) who is retained or employed as a bona fide
27 Consultant or Expert for purposes of providing advice or testimony in connection
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1 with this litigation, whether full- or part-time, by or at the direction of counsel of
2 record for a Party.

3 g. "Highly Confidential" information is information within the
4 scope of Rule 26(c)(1)(G) that is current or future business or technical trade
5 secrets and plans more sensitive or strategic than Confidential information, the
6 disclosure of which is likely to significantly harm that Person's competitive
7 position, or the disclosure of which would contravene an obligation of
8 confidentiality to a third Person or to a Court. Highly Confidential information
9 may include the technical specifications for the printing of textbooks and the
10 Publishers' methods for distinguishing counterfeit textbooks.

11 h. Information is not Confidential or Highly Confidential if (i) it is
12 disclosed in a printed or digital publication, (ii) it is known to the public, (iii) it
13 was known to the Recipient without obligation of confidentiality before the
14 Producer disclosed it, (iv) it is or becomes known to the Recipient by means not
15 constituting a breach of this Order, or (v) a Person lawfully obtained it
16 independently of this litigation.

17 **2. Designation of information as Confidential or Highly Confidential**

18 a. **Good faith requirement:** A Person's designation of
19 information as Confidential or Highly Confidential means that the Person believes
20 in good faith, upon reasonable inquiry, that the information qualifies as such.

21 b. **Documents and things:** A Person designates information in a
22 document or thing as Confidential or Highly Confidential by clearly and
23 prominently marking it on its face as "CONFIDENTIAL" or HIGHLY
24 CONFIDENTIAL." A Producer may make documents or things containing
25 Confidential or Highly Confidential information available for inspection and
26 copying without marking them as confidential without forfeiting a claim of
27 confidentiality, so long as the Producer causes copies of the documents or things to
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1 be marked as Confidential or Highly Confidential before providing them to the
2 Recipient.

3 c. **Deposition testimony:** A Person designates information in
4 deposition testimony as Confidential or Highly Confidential by stating on the
5 record at the deposition that the information is Confidential or Highly Confidential
6 or by advising the opposing Party and the stenographer and videographer in
7 writing, within fourteen days after receipt of the deposition transcript, that the
8 information is Confidential or Highly Confidential.

9 d. **Failure to designate:** A Person's failure to designate a
10 document, thing, or testimony as Confidential or Highly Confidential does not
11 constitute forfeiture of a claim of confidentiality as to any other document, thing,
12 or testimony. A failure to designate a document, thing, or testimony as
13 Confidential or Highly Confidential that a Producer claims is inadvertent shall be
14 treated in the same fashion as a privileged or work product document under
15 Federal Rule of Evidence 502.

16 e. **Withdrawal of designation:** A Person who has designated
17 information as Confidential or Highly Confidential may withdraw the designation
18 by written notification to all parties in the case.

19 f. **Disputes:** If a Party disputes a Producer's designation of
20 information as Confidential or Highly Confidential:

21 i. The Party shall notify the Producer in writing of the basis for
22 the dispute, identifying the specific document[s] or thing[s] as to which the
23 designation is disputed and proposing a new designation for such materials.

24 ii. The Party and the Producer shall then meet and confer to
25 attempt to resolve the dispute without involvement of the Court.

26 iii. If they cannot resolve the dispute, the proposed new
27 designation shall be applied fourteen (14) days after notice of the dispute unless
28 within that fourteen day period the Producer provides to the party disputing

1 designation a proposed Joint Stipulation to be filed with the Court pursuant to
2 Local Rule 37.2.

3 iv. The Producer bears the burden of proving that the information
4 is properly designated as Confidential or Highly Confidential.

5 v. The information shall remain subject to the Producer's
6 Confidential or Highly Confidential designation until the Court rules on the
7 dispute.

8 vi. A Party's failure to contest a designation of information as
9 Confidential or Highly Confidential is not an admission that the information was
10 properly designated as such.

11 **3. Use and disclosure of Confidential or Highly Confidential**
12 **information:**

13 a. Confidential and Highly Confidential information may be used
14 exclusively for purposes of this litigation, subject to the restrictions of this order.

15 b. Absent written permission from the Producer or further order
16 by the Court, the Recipient may not disclose Confidential information to any
17 Person other than the following:

- 18 i. a Party's outside counsel of record, including necessary
19 paralegal, secretarial and clerical Personnel assisting such
20 counsel;
21 ii. a Party's in - house counsel and its in-house personnel with
22 responsibility for anti-piracy matters whose access to the
23 information is reasonably required to supervise, manage, or
24 participate in this case;
25 iii. a Party's officers and employees directly involved in this
26 case whose access to the information is reasonably required
27 to supervise, manage, or participate in this case;
28

- iv. a stenographer and videographer recording testimony concerning the information;
- v. subject to the provisions of paragraph 5(e) of this order, Experts and Consultants and their staff whom a Party employs for purposes of this litigation only; and
- vi. the Court and Personnel assisting the Court.

c. Absent written permission from the Producer or further order by the Court, the Recipient may not disclose Highly Confidential information to any Person other than those identified in paragraph 6(b)(i), (ii), (iv), (v), and (vi) subject to the additional requirements of paragraph 6(d) with respect to persons identified in paragraph 6(b)(ii).

d. Prior to the disclosure of Highly Confidential information to person(s) identified in paragraph 6(b)(ii), the following procedure shall apply:

- i. A Recipient must identify, in writing, the name of each such person, their title, a description of their role, confirmation that each such person does not have decision making authority over pricing, selection of customers, or selection of distributors, and must provide a copy of a signed undertaking in the form of Appendix 1 to this Order.
- ii. The Producing Party shall then be permitted to object, in writing, to the disclosure of Highly Confidential Information to any such person(s) within 14 days of actual receipt of written notice of the proposed disclosure.
- iii. If the Producing Party objects to the designation of any person(s) identified pursuant to this paragraph 6(d), the Recipient may then give notice of a dispute, and the parties shall follow the procedure for resolving disputes set forth in paragraph 5(f).

e. A party may not disclose Confidential or Highly Confidential information to an expert or consultant, pursuant to paragraph 6(b) or 6(c) of this order until after the expert or consultant has signed an undertaking in the form of Appendix 1 to this Order. The party obtaining the undertaking must serve it on all other parties within ten days after its execution. At least ten days before the first disclosure of Confidential or Highly Confidential information to an expert or consultant (or member of their staff), the party proposing to make the disclosure must serve the producer with a written identification of the expert, consultant, or employee and a copy of his or her curriculum vitae. If the producer has good cause to object to the disclosure (which does not include challenging the qualifications of the expert or consultant), it must serve the party proposing to make the disclosure with a written objection within ten days after service of the identification. Unless the parties resolve the dispute within ten days after service of the objection, the producer must move the Court promptly for a ruling pursuant to Local Rule 37.2, and the Confidential or Highly Confidential information may not be disclosed to the expert or consultant without the Court's approval.

f. Notwithstanding paragraph 6(a) and (b), a Party may disclose Confidential or Highly Confidential information to: (i) any employee or author of the Producer; (ii) any Person, no longer affiliated with the Producer, who authored the information in whole or in part; and (iii) any Person who received the information before this case was filed.

g. A Party who wishes to disclose Confidential or Highly Confidential information to a Person not authorized under paragraph 6(b) or 6(c) must first make a reasonable attempt to obtain the Producer's permission. If the Party is unable to obtain permission, it may move the Court to obtain permission pursuant to Local Rule 37.2.

4. Inadvertent Disclosure: Inadvertent disclosures of material protected by the attorney - client privilege or the work product doctrine shall be handled in

1 accordance with Federal Rule of Evidence 502. Inadvertent disclosure by a
2 Producer of a document, thing, or testimony that a Producer claims is Confidential
3 or Highly Confidential shall be treated in the same fashion as a privileged or work
4 product document under Federal Rule of Evidence 502.

5 **5. Filing with the Court:**

6 a. This protective order does not, by itself, authorize the filing of
7 any document under seal. No document may be filed under seal without prior leave
8 of court. A Party wishing to file under seal a document containing Confidential or
9 Highly Confidential information must move the Court, consistent with Local Rule
10 79-5 et seq. on or before the due date for the document, for permission to file the
11 document under seal.

12 b. If a Party wishes to file in the public record a document that
13 another Producer has designated as Confidential or Highly Confidential, the Party
14 must advise the Producer of the document no later than five business days before
15 the document is due to be filed, so that the Producer may move the Court to require
16 the document to be filed under seal.

17 **6. Document Disposal:** Upon the conclusion of this case, each Party
18 must return to the Producer all documents and copies of documents containing the
19 Producer's Confidential or Highly Confidential information, and must destroy all
20 notes, memoranda, or other materials derived from or in any way revealing
21 confidential or highly confidential information.

22 Alternatively, if the Producer agrees, the Party may destroy all documents
23 and copies of documents containing the Producer's Confidential or Highly
24 Confidential information. The Party returning and/or destroying the Producer's
25 Confidential and Highly Confidential information must certify in writing, within
26 90 days of the conclusion of the case, its compliance with the requirements of this
27 paragraph. Notwithstanding the requirements of this paragraph, a Party and its
28 counsel may retain one complete set of all documents filed with the Court,

1 remaining subject to all requirements of this order, together with the following
2 documents that may contain or reference designated Confidential or Highly
3 Confidential information: transcripts and exhibits from depositions, court hearing
4 transcripts and/or trial transcripts, pleadings or exhibits filed with the Court, expert
5 reports, declarations, affidavits, memoranda, and/or correspondence.

6 **7. Originals:** A legible photocopy of a document may be used as the
7 “original” for all purposes in this action. The actual “original,” in whatever form
8 the producing Party has it, must be made available to any other Party within ten
9 days after a written request.

10 **8. Survival of obligations:** This order’s obligations regarding
11 Confidential and Highly Confidential information survive the conclusion of this
12 case.

13
14 DATED JUN 10 2014

By 
United States Magistrate Judge

EXHIBIT A

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HILL COMPANIES, INC. and JOHN
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CENGAGE LEARNING, INC., a Delaware
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Defendants.

Case No.: 2:11-CV-3738 GHK (PJWx)

Honorable George H. King

**APPENDIX 1 TO STIPULATED
PROTECTIVE ORDER**

I, _____ [name], state the following under penalties of perjury as provided by law:

I am _____ [position] for _____ [employer].

I will be receiving Confidential and/or Highly Confidential information that is covered by the Stipulated Protective Order governing this case. I have read the Stipulated Protective Order and understand that the Confidential and/or Highly Confidential information is provided pursuant to the terms and conditions in that order.

I agree to be bound by the Stipulated Protective Order. I agree to use the Confidential and/or Highly Confidential information solely for purposes of this case. I understand that neither the Confidential and/or Highly Confidential information nor any notes concerning that information may be disclosed to anyone that is not bound by the Stipulated Protective Order. I agree to return the Confidential and/or Highly Confidential information and any notes concerning that information to the attorney for the producer of Confidential and/or Highly Confidential information or to destroy the information and any notes at the attorney's request.

I submit to the jurisdiction of the Court that issued the protective order for purposes of enforcing that order. I give up any objections I might have to that Court's jurisdiction over me or to the propriety of venue in that Court.

Title:

Date: